

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE BOARD OF PEACE OFFICER STANDARDS AND TRAINING

In the Matter of the
Peace Officer License of
Scott Anthony Hanson,
License No. 14621.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
RECOMMENDATION**

The above-entitled matter came on for hearing before Administrative Law Judge Steve M. Mihalchick at 9:30 a.m. on October 1, 1999, at the Owatonna City Hall, Owatonna, Minnesota.

Michele M. Owen, Assistant Attorney General, Suite 200, 525 Park Street, St. Paul, Minnesota 55103, appeared on behalf of the Complaint Committee ("the Committee") of the Board of Peace Officer Standards and Training ("POST" or "the Board"). Ross L. Leuning, Walbran, Furness & Leuning, 140 East Main Street, Owatonna, Minnesota 55060, appeared on behalf of the Licensee, Scott Anthony Hanson. The record closed in the matter with the receipt of posthearing briefs on October 18, 1999.

STATEMENT OF ISSUE

Whether Scott Anthony Hanson's 1992 conviction for theft and subsequent statements by him constitute grounds for disciplinary action against his peace officer license.

Based on the filings and records in this matter, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On February 19, 1992, Scott Hanson was arrested in Saint Cloud for breaking into cars and stealing citizen's band radios and radar detectors. He was issued a ticket with a court date upon which he was to appear to answer for the charges of tampering with a motor vehicle in violation of Minn. Stat. § 609.605 and theft in violation of Minn. Stat. § 609.52.^[1] At the time of his arrest, Hanson was twenty years old and a student at Saint Cloud State University. Hanson did not deny his involvement in the activity for which he was arrested.

2. On May 11, 1992, Hanson appeared before the Honorable Bernard Boland, Judge in Stearns County District Court and entered a guilty plea to a misdemeanor charge. Hanson had informed his attorney that he desired to become a

law enforcement officer and did not want that day's proceeding to impair his ability to follow that career. His attorney informed him that the plea agreement he had arranged would not preclude him from becoming a police officer. Hanson informed the judge, as well, and Judge Boland indicated that the guilty plea would not be an impediment to a career in law enforcement.

3. Hanson signed a form acknowledging his guilty plea. The form consists of many lines of very small type, with various applicable lines checked, inapplicable portions left blank or lined out, and notations added in handwriting. Located at the top of the form, in handwriting, is the ticket number and the word "Theft."^[2] At the bottom of the form are the signatures of Judge Boland and Scott Hanson. Immediately above the signatures is the handwritten notation "Merge tamp MV for 2nt."^[3] Hanson believed that he had pled guilty to tampering with a motor vehicle. He was sentenced to two days in jail and a \$350.00 fine.^[4] The conviction was never entered into the state-wide criminal information system.

4. Hanson transferred to Normandale Community College for his next year of education. In the Spring semester of 1995, Hanson entered the criminal justice program at Mankato State University. As part of the curriculum, Hanson went on ride-alongs with uniformed police officers. On one of these ride-alongs, the officers ran Hanson's driver's license number through the state-wide data base. No record of any conviction was returned.

5. In 1995, Hanson applied for a position with Twin Cities Security. On the application form, Hanson affirmatively answered the question as to whether he had been convicted of a crime and noted "misdemeanor in Stearns County Minnesota."^[5] A Bureau of Criminal Apprehension search was run on Hanson and no record of any conviction was found.^[6]

6. As Hanson progressed through the criminal justice program at Mankato State University, he became concerned that his misdemeanor conviction could prevent his becoming a licensed police officer. Hanson contacted the Board to determine whether he would have any difficulty becoming licensed. At the time he called the Board, Hanson believed that he had been convicted of tampering with a motor vehicle. The Board staffer Hanson spoke to did not indicate there would be any difficulty becoming licensed.

7. On May 30, 1997, Hanson filled out and signed a Board form required for entry into the professional peace officer education program. The form required answers, to the best of the applicant's knowledge, as to whether the applicant had ever been convicted of any felony offenses or any of thirteen specific statutes. Included on the list was Minn. Stat. § 609.52. Hanson answered "no" to all the questions posed on the form. There is no place on the form to answer any question other than those asked by the Board, and no question that merely asks whether the applicant has any convictions other than for felonies or those statutes listed.

8. A Board staffer ran a search of the state-wide database to determine if Hanson had any convictions. No conviction record was found and Hanson was allowed to enroll in the Peace Officer Education program at Mankato State University.^[7] Hanson completed the program and passed the Board's licensing examination. The letter informing Hanson of his eligibility for licensure noted that the minimum standards for licensure included, "submit to a background search, including submission of fingerprints for the purpose of disclosing any felony convictions."^[8]

9. The Owatonna Police Department hired Hanson as a peace officer on a seasonal basis. On August 14, 1998, the Owatonna Police Department submitted the Board form for requesting issuance of a peace officer license. Chief Fisher of the Owatonna Police Department signed the form affirming that the background check performed on Hanson "did not reveal the conviction of a felony ... or the conviction of any other crime listed in Minnesota Rules 6700."^[9] Hanson signed the form, affirming that he had never been convicted of a felony as defined Minnesota Rules 6700.0100, subp. 21, in this or any other state."^[10] There was no question on the form requesting general information on misdemeanor convictions. The Board issued Hanson a peace officer license on August 17, 1998.

10. Hanson applied for a peace officer position with the City of New Richland in August, 1998. On his application, Hanson answered "yes" to the question on prior criminal history and attached an explanation to the application. Hanson described that situation as "receiving two misdemeanor tickets for tampering with a motor vehicle (2-92 Stearns County)." Chief Flor of the New Richland Police Department ran the required background check and that showed no convictions. Chief Flor then contacted Stearns County directly and eventually discovered that the conviction in 1992 was for a violation of Minn. Stat. § 609.52.

11. Upon discovering that Hanson's conviction was for an offense listed under Minn. Rule Chapter 6700, Chief Flor reported the information to the Board. Chief Flor was not motivated to report the information to the Board for any reason other than the requirement that he do so under Minn. Rule 6700.0701. The Board passed the matter on to the Committee for investigation.

12. On December 15, 1998, the Committee served a Complaint on Licensee. The Complaint scheduled a conference before the Committee on January 19, 1999. Licensee appeared at the conference and contested the allegations in the Complaint.

13. A Notice Of and Order for Hearing was issued by the Committee and served on Licensee on June 8, 1999. The Notice indicated that a hearing would be held on July 12, 1999 at the Office of Administrative Hearings.

Based on the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Board of Peace Officer Standards and Training and the Administrative Law Judge have jurisdiction of this matter pursuant to Minn. Stat. §§ 214.10 and 14.50.
2. Proper notice of this matter has been given and the Board has met all necessary procedural requirements.
3. Scott Hanson is currently licensed as a peace officer by the Board.
4. Licensee was convicted of a misdemeanor violation of Minn. Stat. § 609.52, on May 11, 1992. At the time of his conviction, Hanson was not a licensee of the Board. Minn. Rule 6700.1600 A and L makes a conviction of that offense a violation of the standard of conduct required of licensees. Scott Hanson's conviction of a misdemeanor violation of Minn. Stat. § 609.52 in 1992 does not violate the standard of conduct set by Minn. Rule 6700.1600 A and L because it occurred prior to him becoming a licensee.
5. The discovery of the prior conviction of Minn. Stat. § 609.52 authorizes the initiation of proceedings to suspend or revoke Scott Hanson's peace officer license under Minn. Rule 6700.0601, subp. 3. Minn. Rule 6700.0601, subp. 1, provides grounds for denial of applications for examination but does not provide grounds to revoke a license that has been issued. The disciplinary standards of Minn. Rule 6700.1600 B apply to such proceedings.
6. By answering the questions posed to him in the application process to the best of his knowledge, Scott Hanson did not obtain his license from the Board by fraud or cheating in violation of Minn. Rule 6700.1600 B.
7. Under Minn. Stat. § 214.10, subd. 11, the Board is authorized to take disciplinary action against a licensee who has violated the standards of conduct of licensees.

Based on the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RESPECTFULLY RECOMMENDED THAT the Board of Peace Officer Standards and Training take no disciplinary action against the peace officer license of Scott Anthony Hanson.

Dated: November 1, 1999.

STEVE M. MIHALCHICK
Administrative Law Judge

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NOTICE

Notice is hereby given that, pursuant to Minn. Stat. § 14.61, the final decision of the Board shall not be made until this Recommendation has been made available to the parties to the proceeding for at least ten days, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the Board. Exceptions to this Report, if any, shall be filed with Neil Melton, Executive Director of the Board, 200 Spruce Tree Center, 1600 University Avenue, St. Paul, Minnesota 55104-3825, telephone no. (651) 643-3072. Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

MEMORANDUM

The Committee asserts that there are two bases for imposing discipline on Hanson's peace officer license. The fact of the conviction is sufficient, in the Committee's view, to impose discipline under Minn. Rule 6700.1600. In addition, the Committee asserts that discipline may be imposed for Hanson's failure to identify that he had been convicted of theft in applying for a license from the Board. Hanson asserts that he acted in good faith in answering the questions asked of him and he never concealed that he had been convicted of a misdemeanor.

Conviction as a Basis for Revocation

Hanson pled guilty to a misdemeanor in 1992. At the time of his guilty plea, he was not aware of what offense he had pled guilty to, but he had been assured that the offense would not preclude him from pursuing a career in law enforcement. Subsequently, Hanson checked several sources, including the Board, to ensure that he was not disqualified from working in law enforcement.^[11] At no time after May 11, 1992, did Hanson see a record that indicated he had been convicted of violating Minn. Stat. § 609.52. Whenever an application form asked whether he had been convicted of a

misdemeanor, Hanson answered in the affirmative. This is not a case where the applicant knowingly concealed a criminal record.

The Committee asserts that persons who have a conviction of Minn. Stat. § 609.52 are ineligible for licensure. That issue was explicitly addressed for persons applying prior to 1994 in ***Fields v. Minnesota Police Recruitment System***, 1998 WL 40507 (Minn.App. 1998) where the Court of Appeals stated:

Appellants also argue that respondents did not meet the minimum selection standards for becoming peace officers because their misdemeanor theft convictions make them ineligible under Minn.R. 6700.0601, subpt. 1.I. But Minn.R. 6700.0601, subpt. 1.I, was not adopted as a rule until 1994. 18 Minn.St.Reg. 1961 (1994). Therefore, the rule does not apply to respondents, who sought peace officer licenses before 1993. See ***Peoples Natural Gas Co. v. Minnesota Pub. Utils. Comm'n***, 369 N.W.2d 530, 533 (Minn.1985) (ratemaking is quasi-legislative function and legislation operates prospectively). Respondents' misdemeanor theft convictions did not disqualify them from becoming licensed peace officers, and therefore, did not affect respondents' standing.

The existing statutory standard when ***Fields*** was decided is set out in Minn. Stat. § 214.10, subd. 2a (1992), which states in pertinent part:

A board shall initiate proceedings to suspend or revoke a license or shall refuse to renew a license of a person licensed by the board who is convicted in a court of competent jurisdiction of violating sections ... 609.52

The statutory standard is reflected in the disciplinary standard of Minn. Rule 6700.1600 L, which renders a licensee subject to discipline for "being convicted ... of a violation of Minnesota Statutes ... 609.52; As in ***Fields***, for this disciplinary standard to apply, the Licensee must be convicted of the offense after obtaining the Board license. A prior misdemeanor conviction of a listed offense is not a violation of Minn. Rule 6700.1600 L and discipline cannot be imposed on Hanson for a violation of that rule.

Fraud in the Application Process

For persons applying for POST licensure after 1994, such as Hanson, Minn. Rule 6700.0601, subp. 1.I, controls. The rule states, in pertinent part:

6700.0601 EXAMINATION STANDARDS.

Subpart 1. **Grounds for denial.** Violations of the following standards shall be grounds to deny an applicant to take an examination or to deny eligibility for a license.

A. making any false material statement to the board;

* * *

I. having been convicted of a crime listed in part 6700.0300, subpart 5, item B, subitems (3) to (7).

Minn. Rule 6700.0601, subp. 1, does not require that persons who have been convicted of violating Minn. Stat. § 609.52 be excluded from licensure. Rather, the rule states that such violations "shall be grounds" upon which to base such a denial. Any such denial is subject to appeal.^[12] In this matter, due to Hanson's ignorance of the actual basis for his conviction and the absence of any record of that conviction in the state-wide criminal history database, the opportunity to deny Hanson's application to the law enforcement program was missed. There is no language in the rule that authorizes revisiting the issue.^[13]

This does not mean that no remedy is available against a person who engages in misrepresentation to obtain a license. Under Minn. Rule 1600.1600 B, a licensee who obtains a license "by fraud or cheating, or attempting to subvert the examination process" is subject to disciplinary action.

The Committee maintains that the making of a material false statement in application materials constitutes fraud and that Minn. Rule 1600.1600 B was violated by Hanson's answer of "no" to the question of whether he had ever been convicted of theft in violation of Minn. Stat. § 609.52. The credibility of Hanson's testimony has been carefully examined to determine the state of his knowledge about his conviction. As far as he knew, he had pled guilty to tampering with a motor vehicle.^[14]

Whether Hanson knew the truth about his conviction is asserted to be irrelevant by the Committee. Since the statement was false, discipline is claimed to be appropriate. But the form used to obtain the information states:

To complete this procedure, it is necessary that you provide the information requested below **as accurately as possible**. This information will be verified by the POST Board. The POST Board will notify school of applicants who have records of conviction. Conviction of any of the crimes listed below will disqualify an applicant from admission to the professional peace officer program.^[15]

Immediately above the signature line the form states, "I affirm that the above information is true and correct **to the best of my knowledge**."^[16] The form expressly states the standard to be applied in applications regarding false statements. Hanson was unaware of the true nature of his conviction and reasonably believed that he had been convicted of an offense that did not disqualify him from licensure as a peace officer.^[17] The absolute truth or falsity of the statement is not a basis for revocation or suspension of Hanson's license. Hanson did not commit fraud in obtaining his license from the Board and discipline under Minn. Rule 6700.1600 B is not appropriate.

Equitable Considerations

The Committee relies on the fact of Hanson's conviction of a violation of Minn. Stat. § 609.52 in seeking discipline in this matter. There was no effort to show that Hanson is not a good officer or has committed any violation of law or Board rule after becoming licensed as a peace officer. In fact, the record in this matter is un rebutted that Officer Hanson is well respected and considered to be trustworthy in each of the law enforcement positions he has occupied. In assessing the propriety of discipline in this manner, the letter of the rule should be measured by its spirit.

Background checks are conducted when a person applies for a license to obtain a forecast of anticipated conduct by reviewing that person's past conduct. In this matter, Hanson engaged in a youthful indiscretion that, while criminal, warranted minor punishment. The conduct was described as a violation of Minn. Stat. § 609.52 in the paperwork. Had that same conduct been described as a violation of Minn. Stat. § 609.605 (as could well have happened), there would be no ground for pursuing discipline against Officer Hanson now. There is a fundamental inequity in applying a rule to foreclose licensure in a profession based not on the conduct of the licensee, but rather on the label applied to that conduct.

The record in this matter shows that Officer Hanson has repeatedly and consistently acknowledged his misdemeanor conviction. No one maintains that Officer Hanson's conduct since his conviction is anything less than exemplary. Under such circumstances, even if some discipline were to be imposed, the appropriate level of discipline should not be severe.

S.M.M.

^[1] Exhibit 1.

^[2] Exhibit 2.

^[3] *Id.*

^[4] An additional 28 days and \$350 fine was stayed for one year, conditioned on Hanson having no same or similar offences.

^[5] Exhibit 18.

^[6] *Id.*

^[7] Exhibit 7.

^[8] Exhibit 10.

^[9] Exhibit 11.

^[10] *Id.*

^[11] The Committee points out that Hanson's own ignorance of the true nature of his conviction means that Board staff could not have accurately reassured him that he remained eligible. Hanson's contact with the Board merely indicates his good faith in believing himself not disqualified, not establishing some form of estoppel against the Board.

^[12] Minn. Rule 6700.0300, subp. 5.C.

^[13] Minn. Rule 6700.0601, subp. 3, expressly requires the Board to "begin proceedings to suspend or revoke the license" where conduct violative of subpart 1 is discovered after the license is issued. Such proceedings are governed by Minn. Rule 6700.1600.

^[14] While the Committee rightly points out inconsistencies in the several times Hanson identified the offense he thought he had been convicted of, these inconsistencies never raise the possibility of his having been convicted of theft. At the time of his conviction, misdemeanor offenses by nonlicensees did not constitute a disqualification from licensure.

^[15] Exhibit 4 (emphasis added).

^[16] *Id.* (emphasis added).

^[17] The rule was changed in 1994. So Judge Boland and Hanson's attorney were correct that at the time that his guilty plea would not impair his obtaining licensure. This fact adds considerable credence to Hanson's testimony that he believed no disqualifying conviction existed.